

The comments below, are presented by ORBITEL S.A E.S.P.

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<PROCEEDING> 02-324  
<DATE> 02/05/03  
<NAME> ORBITEL S.A E.S.P  
<ADDRESS1> CRA 43 A # 1 SUR - 188  
<ADDRESS2>  
<CITY> MEDELLIN  
<STATE> DC  
<ZIP>00000  
<LAW-FIRM>  
<ATTORNEY>  
<FILE-NUMBER>  
<DOCUMENT-TYPE> CO  
<PHONE-NUMBER> (574) 3251505  
<DESCRIPTION> Email Comment  
<CONTACT-EMAIL> vemarin@ORBITEL.com.co  
<TEXT>

## Comments on the NPRM

### 1) General Issues

We have considered appropriate for the purpose of this document to briefly explain the regulation applicable to long distance communications services as well as to mobile communications in Colombia.

#### a) Long Distance Service

The current regulation has established that in order to provide national and international long distance services in Colombia, operators shall pay a license issued by the Communications Ministry, which cost was established in US\$ 150.000.000. In addition, all Long Distance operators must pay to the Communications Fund five percent (5%) of their gross income.

Within twenty (20) calendar days following the issuance of the license, the licensee must constitute a fulfilment guarantee by an amount of US\$ 300.000.

Once the license has been granted, operations should start within 12 months following the issuance of the license. All the operators that have been granted a license should interconnect all local operators that currently exist or will eventually exist in the country. This interconnection implies that all long distance operators shall also pay to all local operators the interconnection charges for access and use of their networks. Such access charges represent more than half the cost of completing and international phone call into Colombia and there is no

apparent way of reducing them since they are regulated by the CRT<sup>1</sup> which adjusts them upwards on a yearly basis.

Long distance operators are forced to install and operate Social Telephone Integrated Centres, CITS, whose aim is to offer the community capacity for at least five (5) simultaneous users, with access to switched network national and international long distance service, installation of two (2) computer terminals with Internet service that allows direct access to it, with electronic mail, offering individual mail accounts to deliver electronic mail to the community, with priority to the student population and installation of two (2) fax or facsimile terminal that allow direct access to this service to the community, with priority to the student population.

#### b. Mobile Communications Service

In accordance with the current regulation, mobile telephony is a public communication service, non residential, which is in charge of the Nation. In this sense, it is the duty of the Communications Ministry to grant the concession of this service through a contract. Under this scenario, each of the current mobile operators in Colombia should have paid to the Nation between 150 and 400 million dollars, to a total of US\$ 1.2 million for the whole concession.

Concessions should be granted in two networks, which competed between them in each service area according to the frequencies distribution assigned by the Communications Ministry, and making a periodical payment (quarterly) for such frequencies.

Mobile operators are forced to provide the service along all the national territory both in rural as well as in urban areas, having to implement plans to provide the service in municipalities with unmet basic needs, which implies the corresponding costs of interconnection to all local operators.

Regarding rates, mobile operators are free to establish their own fees. In fact, the CRT, at the moment of establishing the regulation for the fee regime in accordance with the laws and regulations, decided to grant mobile operators wide faculties to determine the fee structure applicable to their users.

## 2.) Specific Issues

#### a) Long Distance Service

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<sup>1</sup> CRT: Colombian regulator

Due to the way the ISP is designed, there is a chance and an invitation for American operators to use alternative methods to terminate their traffic, including the use of illegal operators overseas, which obviously offer better prices because they don't have the costs of any legal operation. Even though in the short term this may lead to a decrease in termination rates, in the long term it may affect the industry considering that there is an imminent unfair competition with legally established operators in foreign countries, and the effect is reverted as long as foreign operators receive a lower incoming traffic volume, forcing them to keep termination rates almost unchanged because they cannot compensate the decrease in prices.

In fact, American operators, with the excuse of looking for a decrease in termination rates in Colombia have entered in agreements with illegal operators that do not comply with all the obligations established by Colombian laws for long distance service operators and consequently do not incur in the same costs, which at first gives them a competitive advantage. It is important to mention that the illegal termination of traffic, being a behaviour in opposite to penal law, has been prosecuted by Colombian authorities mostly if it is considered that through these illegal operators terrorism and drug traffic acts are facilitated. Nonetheless, about 60% of the traffic from USA to Colombia is handled by illegal operators used by American operators, being this an evident minute smuggling sponsorship.

ORBTEL, at first would not disagree with the modification to the ISP since from the beginning its operation has been cost-oriented. However, it proposes that within the modifications to the regulations, be included policies that help overseas carriers and national authorities to offset factors that threaten competition within the national market and which at the end impact in the competitiveness of termination rates offered by American operators. Given this, it is proposed the inclusion of policies oriented to control that American operators terminate traffic in foreign countries using overseas carriers that are able to provide the service within the territory in which they operate, duly authorized by law in each country.

Furthermore, it is also important to mention that termination rates offered by Colombian operators are determined by costs whose origin lies in the regulation (Eg: license, charges to be paid to local operators, infrastructure, etc) and which are a result of the market opening in regard to long distance, being this the reason why these costs are out of control and consequently it is difficult that such termination rates decrease more than it is required to recover such costs.

In this sense and corresponding the interest of the FCC in receiving not only comments but also useful proposals to achieve the objective search by the regulation, it is suggested that the FCC officially publishes the list of legally established operators in each country and establishes a state cooperation policy to control the interconnection with illegal operators overseas and impose sanctions to those who get connected with such illegal operators.

It will lack any legal and ethic fundament that American operators continue using illegal operators in foreign countries, which not only violate

telecommunications regulations but also civil law, with the only aim of obtaining an economic benefit represented in a decrease in termination rates.

#### b.) Mobile Services

In relation to termination rates for mobile communication services, in the Colombian case (which functions under the modality of "Calling Party Pays") the charge for interconnection that mobile operators must pay is regulated by CRT. However, it should be mentioned that in the Colombian case, termination rates are also cost oriented in the sense that they correspond to an extremely high concession cost that mobile communication companies had to pay to enter in the Colombian market as well as the cost imposed by all other regulatory agencies, so it can be disregarded the possibility of anti competitive behaviour originated on abuse of market power as it is mentioned by FCC in the discussed document.

In accordance with what has been previously mentioned, all negotiations should be made under the scope of the WTO so that States commit themselves to take pertinent actions through a regulatory way and long distance operators are freed from this pressure. In turn, Colombian operators have also been affected by the large increase in mobile termination rates of different countries, while the difference in termination costs fixed/mobile in Colombia is not so large and any action on this regard would be supported by ORBITEL

In relation to the suggestions that FCC requested in regard to alternatives to maintain North American users informed about the overcosts implied in mobile calls to foreign countries, it is clear that it is the responsibility of the originating operators to do this task, mostly when the terminating operator provides the series that correspond to mobile lines. This may be done through consumer announces which indicate that a specific number has a specific cost for being a mobile, so the consumer has the chance to hang up if he is not willing to cover the high costs associated with calling to mobile lines on foreign countries.